

Page 1 of 2

RESPONDENT NAME: JEFF DUTTON DBA DUTTON CATTLE COMPANY

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 12708 Ten Mile Road, Mason County</p> <p>TYPE OF OPERATION: Animal feeding operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: Two complaints were received, alleging odors related to disposal of dead animals, cattle pens, manure, and incomplete control structures. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired October 20, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p>TCEQ Attorney: Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p>TCEQ Enforcement Coordinator: Ms. Merilee Hupp, Water Enforcement Section, MC 169, (512) 239-4490</p> <p>TCEQ Regional Contact: Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479</p> <p>Respondent: Mr. Jeff Dutton, Dutton Cattle Company, P.O. Box 1376, Mason, Texas 76856</p> <p>Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: October 10, 2007</p> <p>Dates of Investigation Relating to this Case: November 8 and 9, 2007</p> <p>Date of NOE Relating to this Case: November 30, 2007</p> <p>Background Facts: The EDPRP was filed May 13, 2008, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on May 29, 2008. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent no longer operates the Plant.</p> <p>MLM:</p> <ol style="list-style-type: none"> Failed to have a rain gauge installed on site [30 TEX. ADMIN. CODE § 321.47(e)(5)]. Failed to maintain a permanent pond marker in the retention control structure ("RCS") [30 TEX. ADMIN. CODE § 321.47(e)(6)]. Failed to ensure that the pond liners were protected from animals by fences or other protective devices [30 TEX. ADMIN. CODE § 321.47(e)(7)]. Failed to ensure that all construction and design of the RCS, including embankments and liners, were certified by a licensed Texas professional engineer [30 TEX. ADMIN. CODE §§ 321.47(d)(3) and (5) and 321.38(e)(2)]. Failed to equip the RCS with an irrigation, evaporation, or liquid removal system capable of dewatering the RCS [30 TEX. ADMIN. CODE § 321.47(d)(8)]. Failed to properly dispose of industrial solid waste [30 TEX. ADMIN. CODE § 335.4]. Failed to prevent the outdoor burning of waste [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 	<p>Total Assessed: \$9,975</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$9,975</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action(s) Taken:</p> <p>The ED recognizes that the Respondent ceased operating the Plant on December 15, 2007.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

TCEQ

DATES	Assigned	3-Dec-2007	Screening	7-Jan-2008	EPA Due	
	PCW	7-Jan-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Jeff Dutton dba Dutton Cattle Company		
Reg. Ent. Ref. No.	RN104913702		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	35200	No. of Violations	7	
Docket No.	2008-0059-MLM-E	Order Type	1660	
Media Program(s)	Water Quality	Enf. Coordinator	Merrilee Hupp	
Multi-Media	Air and Industrial Waste	EC's Team	Enforcement Team 1	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$9,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5% Enhancement **Subtotals 2, 3, & 7** \$475

Notes Respondent received one NOV for same or similar violations.

Culpability No 0% Enhancement **Subtotal 4** \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction **Subtotal 5** \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$76 **0% Enhancement*** **Subtotal 6** \$0
Approx. Cost of Compliance \$9,550 **Capped at the Total EB \$ Amount*

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$9,975

OTHER FACTORS AS JUSTICE MAY REQUIRE 0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$9,975

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$9,975

DEFERRAL 0% Reduction **Adjustment** \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY \$9,975

Screening Date 7-Jan-2008

Docket No. 2008-0059-MLM-E

PCW

Respondent Jeff Dutton dba Dutton Cattle Company

Policy Revision 2 (September 2002)

Case ID No. 35200

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104913702

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Respondent received one NOV for same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 7-Jan-2008		Docket No. 2008-0059-MLM-E		PCW
Respondent Jeff Dutton dba Dutton Cattle Company		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 35200		<i>PCW Revision November 6, 2007</i>		
Reg. Ent. Reference No. RN104913702				
Media [Statute] Water Quality				
Enf. Coordinator Merrilee Hupp				
Violation Number	<input type="text" value="1"/>			
Rule Cite(s)	<div style="border: 1px solid black; padding: 5px;">30 Tex. Admin. Code § 321.47(e)(5)</div>			
Violation Description	<div style="border: 1px solid black; padding: 5px;">Failed to have a rain gauge installed on site, as documented during an investigation conducted November 8 and 9, 2007.</div>			
Base Penalty				<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

	Harm				
	Major	Moderate	Minor		
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	x	
				Percent	<input type="text" value="5%"/>

>> Programmatic Matrix

	Falsification				
	Major	Moderate	Minor		
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent	<input type="text" value="0%"/>

Matrix Notes
 Failure to have a rain gauge would prevent the Respondent from determining when to pump the Retention Control Structure ("RCS") to prevent the discharge of pollutants which will or could expose human health or the environment to insignificant amounts of pollutants.

Adjustment

\$500

Violation Events

Number of Violation Events	<input type="text" value="1"/>		Number of violation days	<input type="text" value="60"/>
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mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty

One single event is recommended.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$0"/>	Violation Final Penalty Total <input type="text" value="\$525"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$525"/>	

Economic Benefit Worksheet

Respondent Jeff Dutton dba Dutton Cattle Company
Case ID No. 35200
Reg. Ent. Reference No. RN104913702
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$50	8-Nov-2007	15-Dec-2007	0.1	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for a rain gauge and its installation. Date required is the investigation date and the final date is when the cattle were removed from the facility.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50

TOTAL

\$0

Screening Date 7-Jan-2008

Docket No. 2008-0059-MLM-E

PCW

Respondent Jeff Dutton dba Dutton Cattle Company

Policy Revision 2 (September 2002)

Case ID No. 35200

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104913702

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 321.47(e)(6)

Violation Description

Failed to maintain a permanent pond marker in the RCS, as documented during an investigation conducted November 8 and 9, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to have a pond marker may result in insufficient capacity of the RCS, resulting in a discharge and exposing human health or the environment to insignificant amounts of pollutants as a result of this violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

60 Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$525

This violation Final Assessed Penalty (adjusted for limits) \$525

Economic Benefit Worksheet**Respondent:** Jeff Dutton dba Dutton Cattle Company**Case ID No.:** 35200**Reg. Ent. Reference No.:** RN104913702**Media:** Water Quality**Violation No.:** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$350	8-Nov-2007	15-Dec-2007	0.1	\$0	\$2	\$2
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for determination of pond marker calibrations by a consultant and its placement. Date required is the investigation date and final date is when the cattle were removed from the facility.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs**Approx. Cost of Compliance**

\$350

TOTAL

\$2

Screening Date 7-Jan-2008

Docket No. 2008-0059-MLM-E

PCW

Respondent Jeff Dutton dba Dutton Cattle Company

Policy Revision 2 (September 2002)

Case ID No. 35200

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104913702

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 321.47(e)(7)

Violation Description

Failed to ensure that pond liners are protected from animals by fences or other protective devices, as documented during an investigation conducted November 8 and 9, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Without protection of the pond liners, human health or the environment could be exposed to significant amounts of pollutants which would not exceed levels protective of human health.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

60

Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,000

One quarterly event is recommended from the November 8, 2007 investigation date to December 15, 2007 when compliance was achieved by the removal of cattle from the facility.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$11

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent Jeff Dutton dba Dutton Cattle Company
Case ID No. 35200
Reg. Ent. Reference No. RN104913702
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment	\$1,500	8-Nov-2007	15-Dec-2007	0.1	\$1	\$10	\$11
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of fencing materials and labor for the construction of a protective device around the RCS. Date required is the investigation date and final date is when the cattle were removed from the facility.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$11

Screening Date 7-Jan-2008

Docket No. 2008-0059-MLM-E

PCW

Respondent Jeff Dutton dba Dutton Cattle Company

Policy Revision 2 (September 2002)

Case ID No. 35200

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104913702

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code §§ 321.47(d)(3) and (5) and 321.38(e)(2)

Violation Description

Failed to ensure that all construction and design of the RCS, including embankments and liners, are certified by a licensed Texas professional engineer. Specifically, during an investigation conducted November 8 and 9, 2007, the Respondent presented a bill from a consulting firm for liner certification to the investigator, but the Respondent could not produce a liner certification.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100 percent of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

60 Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$35

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent: Jeff Dutton dba Dutton Cattle Company

Case ID No.: 35200

Reg. Ent. Reference No.: RN104913702

Media: Water Quality

Violation No.: 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$5,000	8-Nov-2007	15-Dec-2007	0.1	\$2	\$34	\$35
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for a licensed Texas professional engineer's certification of the design and construction of the RCS, including liner and capacity certifications. Date required is the investigation date and the final date is when the cattle were removed from the facility.

Avoided Costs
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs
Approx. Cost of Compliance
\$5,000
TOTAL
\$35

Screening Date 7-Jan-2008

Docket No. 2008-0059-MLM-E

PCW

Respondent Jeff Dutton dba Dutton Cattle Company

Policy Revision 2 (September 2002)

Case ID No. 35200

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104913702

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 321.47(d)(8)

Violation Description

Failed to equip RCS with either irrigation, evaporation, or liquid removal systems capable of dewatering the RCS, as documented during an investigation conducted November 8 and 9, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to have equipment to dewater the RCS may result in a discharge of pollutants, exposing human health or the environment to insignificant amounts of pollutants as a result of this violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

60 Number of violation days

mark only one with an x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$500

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$14

Violation Final Penalty Total \$525

This violation Final Assessed Penalty (adjusted for limits) \$525

Economic Benefit Worksheet**Respondent:** Jeff Dutton dba Dutton Cattle Company**Case ID No.:** 35200**Reg. Ent. Reference No.:** RN104913702**Media:** Water Quality**Violation No.:** 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment	\$2,000	8-Nov-2007	15-Dec-2007	0.1	\$1	\$14	\$14
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of irrigation or similar equipment capable of dewatering the RCS. Date required is the investigation date, and the final date is when the cattle were removed from the facility.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$14

Screening Date 7-Jan-2008		Docket No. 2008-0059-MLM-E		PCW
Respondent Jeff Dutton dba Dutton Cattle Company				<i>Policy Revision 2 (September 2002)</i>
Case ID No. 35200				<i>PCW Revision November 6, 2007</i>
Reg. Ent. Reference No. RN104913702				
Media [Statute] Water Quality				
Enf. Coordinator Merrilee Hupp				
Violation Number	<input type="text" value="6"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 335.4"/>			
Violation Description	<p>Failed to properly dispose of industrial solid waste. Specifically, during an investigation conducted November 8 and 9, 2007, seven dead cows were documented in different areas at the Facility. No cover had been applied to the dead animals, the carcasses emitted a strong odor, and many flies were present. Additionally, several plastic oil containers, an oil filter, and at least three animal carcasses (one sheep and two cattle) had been disposed of in a pit northeast of an open trailer at the Facility. The trailer also contained the remains of a dead animal.</p>			
Base Penalty				<input type="text" value="\$10,000"/>
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text" value="x"/>		
	Potential			
				Percent <input type="text" value="25%"/>
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="0%"/>
Matrix Notes	<p>Dead animals emitting strong odors and attracting flies, as well as discarded oil containers expose human health and the environment to significant amounts of pollutants which do not exceed levels protective of human health.</p>			
Adjustment				<input type="text" value="\$7,500"/>
				<input type="text" value="\$2,500"/>
Violation Events				
Number of Violation Events		<input type="text" value="2"/>	Number of violation days	
		<input type="text" value="60"/>		
mark only one with an x	daily	<input type="text"/>		
	monthly	<input type="text" value="x"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
Violation Base Penalty <input type="text" value="\$5,000"/>				
<p>Two monthly events are recommended from the November 8, 2007 investigation date to the January 7, 2008 screening date.</p>				
Economic Benefit (EB) for this violation			Statutory Limit Test	
Estimated EB Amount <input type="text" value="\$12"/>			Violation Final Penalty Total <input type="text" value="\$5,250"/>	
			This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,250"/>	

Economic Benefit Worksheet

Respondent Jeff Dutton dba Dutton Cattle Company
Case ID No. 35200
Reg. Ent. Reference No. RN104913702
Media Water Quality
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$500	8-Nov-2007	6-May-2008	0.5	\$12	n/a	\$12
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of labor, materials, and disposal of animal carcasses and oil containers, including oil filters. Date required is the investigation date. Final date is the follow-up investigation date when no waste or cattle were documented at the facility.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$12

Screening Date 7-Jan-2008

Docket No. 2008-0059-MLM-E

PCW

Respondent Jeff Dutton dba Dutton Cattle Company

Policy Revision 2 (September 2002)

Case ID No. 35200

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN104913702

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 7

Rule Cite(s)

30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)

Violation Description

Failed to prevent the outdoor burning of waste within the State of Texas, as documented during an investigation conducted November 8 and 9, 2007. Specifically, three open barrels, located behind the loading pens, were being used for burning trash at the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Outdoor burning exposes human health and the environment to insignificant amounts of pollutants which do not exceed levels protective of human health.

Adjustment \$9,000

\$1,000

Violation Events

1

1

Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

Economic Benefit Worksheet

Respondent: Jeff Dutton dba Dutton Cattle Company

Case ID No. 35200

Reg. Ent. Reference No. RN104913702

Media: Water Quality

Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$150	8-Nov-2007	15-Dec-2007	0.1	\$1	n/a	\$1
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for the proper, authorized disposal of waste burned in three open drums. Date required is the investigation date and the final date is when the operations had ceased at the facility.

Avoided Costs
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs
Approx. Cost of Compliance
\$150
TOTAL
\$1

Compliance History

Customer/Respondent/Owner-Operator: CN602997389 DUTTON, JEFF Classification: AVERAGE Rating: 3.00
Regulated Entity: RN104913702 DUTTON CATTLE COMPANY Classification: AVERAGE Site Rating: 3.00
ID Number(s):
Location: 12708 TEN MILE RD., MASON CO. Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region: REGION 08 - SAN ANGELO
Date Compliance History Prepared: January 05, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 05, 2003 to January 05, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Merrilee Hupp

Phone: 512-239-4490

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

09/18/2006 (512921)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 03/22/2006 (460128)

Self Report? NO Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

Description: Failure to prevent multiple unauthorized discharges by improperly disposing of approximately 20 head of dead cattle, regarded as a special waste, to the surface of the soil.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.47(c)

Description: Failure to locate, construct and manage the necessary waste control facilities, for the liquid and solid wastes generated on site as required under the technical requirements found in 30 Texas Administrative Code (TAC) §321.47 for an owner or operator of an AFO that is not defined or designated as a CAFO.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JEFF DUTTON DBA DUTTON
CATTLE COMPANY;
RN104913702**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-0059-MLM-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Jeff Dutton dba Dutton Cattle Company ("Mr. Dutton").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At the time of the violations, Mr. Dutton owned and operated an animal feeding operation located at 12708 Ten Mile Road, Mason County, Texas (the "Plant").
2. The Plant discharged agricultural waste into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code. The Plant consisted of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12). The Plant involved the management and/or the disposal of municipal solid waste and industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on November 8 and 9, 2007, a TCEQ San Angelo Regional Office investigator documented that Mr. Dutton:
 - a. Failed to have a rain gauge installed on site.
 - b. Failed to maintain a permanent pond marker in the retention control structure ("RCS").

- c. Failed to ensure that the pond liners were protected from animals by fences or other protective devices.
 - d. Failed to ensure that all construction and design of the RCS, including embankments and liners, were certified by a licensed Texas professional engineer. Specifically, Mr. Dutton presented a bill from a consulting firm for liner certification to the investigator, but could not produce a liner certification. A capacity evaluation of the RCS had been completed by the Texas State Soil and Water Conservation Board, but it was not sealed by a licensed Texas professional engineer.
 - e. Failed to equip the RCS with an irrigation, evaporation, or liquid removal system capable of dewatering the RCS.
 - f. Failed to properly dispose of industrial solid waste. Specifically, seven dead cows were documented in different areas at the Plant, including one in the bottom of a muddy depression, indicating potentially ponded water. No cover had been applied to the dead animals, the carcasses emitted a strong odor, and many flies were present. Additionally, several plastic oil containers, an oil filter, and at least three animal carcasses had been disposed of in a pit northeast of an open trailer at the Plant. The trailer also contained the remains of a dead animal.
 - g. Failed to prevent the outdoor burning of waste. Specifically, three open barrels, located behind the loading pens, were being used for burning trash.
- 4. Mr. Dutton received notice of the violations on or about December 5, 2007.
 - 5. The Executive Director recognizes that Mr. Dutton ceased operating the Plant on December 15, 2007.
 - 6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Jeff Dutton dba Dutton Cattle Company" (the "EDPRP") in the TCEQ Chief Clerk's office on May 13, 2008.
 - 7. By letter dated May 13, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Dutton with notice of the EDPRP. According to the return receipt "green card," Mr. Dutton received notice of the EDPRP on May 29, 2008, as evidenced by the signature on the card.

8. More than 20 days have elapsed since Mr. Dutton received notice of the EDPRP, provided by the Executive Director. Mr. Dutton failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Dutton is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE chs. 361 and 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Dutton failed to have a rain gauge installed on site, in violation of 30 TEX. ADMIN. CODE § 321.47(e)(5).
3. As evidenced by Finding of Fact No. 3.b., Mr. Dutton failed to maintain a permanent pond marker in the retention control structure ("RCS"), in violation of 30 TEX. ADMIN. CODE § 321.47(e)(6).
4. As evidenced by Finding of Fact No. 3.c., Mr. Dutton failed to ensure that the pond liners were protected from animals by fences or other protective devices, in violation of 30 TEX. ADMIN. CODE § 321.47(e)(7).
5. As evidenced by Finding of Fact No. 3.d., Mr. Dutton failed to ensure that all construction and design of the RCS, including embankments and liners, were certified by a licensed Texas professional engineer, in violation of 30 TEX. ADMIN. CODE §§ 321.47(d)(3) and (5) and 321.38(e)(2). Specifically, Mr. Dutton presented a bill from a consulting firm for liner certification to the investigator, but could not produce a liner certification. A capacity evaluation of the RCS had been completed by the Texas State Soil and Water Conservation Board, but it was not sealed by a licensed Texas professional engineer.
6. As evidenced by Finding of Fact No. 3.e., Mr. Dutton failed to equip the RCS with an irrigation, evaporation, or liquid removal system capable of dewatering the RCS, in violation of 30 TEX. ADMIN. CODE § 321.47(d)(8).
7. As evidenced by Finding of Fact No. 3.f., Mr. Dutton failed to properly dispose of industrial solid waste, in violation of 30 TEX. ADMIN. CODE § 335.4. Specifically, seven dead cows were documented in different areas at the Plant, including one in the bottom of a muddy depression, indicating potentially ponded water. No cover had been applied to the dead animals, the carcasses emitted a strong odor, and many flies were present. Additionally, several plastic oil containers, an oil filter, and at least three animal carcasses had been disposed of in a pit northeast of an open trailer at the Plant. The trailer also contained the remains of a dead animal.

8. As evidenced by Finding of Fact No. 3.g., Mr. Dutton failed to prevent the outdoor burning of waste, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b). Specifically, three open barrels, located behind the loading pens, were being used for burning trash.
9. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Dutton with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
10. As evidenced by Finding of Fact No. 8, Mr. Dutton failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Dutton and assess the penalty recommended by the Executive Director.
11. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Dutton for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
12. An administrative penalty in the amount of nine thousand nine hundred seventy-five dollars (\$9,975.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Dutton is assessed an administrative penalty in the amount of nine thousand nine hundred seventy-five dollars (\$9,975.00) for violations of the Texas Water Code, the Texas Health & Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Dutton's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The

administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Jeff Dutton dba Dutton Cattle Company; Docket No. 2008-0059-MLM-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mr. Dutton.
4. If Mr. Dutton fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Dutton's failure to comply is not a violation of this Order. Mr. Dutton shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Dutton shall notify the Executive Director within seven days after Mr. Dutton becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Dutton shall be made in writing to the Executive Director. Extensions are not effective until Mr. Dutton receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Dutton if the Executive Director determines that Mr. Dutton has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Jeff Dutton dba Dutton Cattle Company
Docket No. 2008-0059-MLM-E
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF MARY R. RISNER

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Mary R. Risner. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Jeff Dutton dba Dutton Cattle Company" (the "EDPRP") was filed with the Office of the Chief Clerk on May 13, 2008.

The EDPRP was mailed to Mr. Dutton at his last known address on May 13, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Dutton received notice of the EDPRP on May 29, 2008, as evidenced by the signature on the card.

More than 20 days have elapsed since Mr. Dutton received notice of the EDPRP. Mr. Dutton failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference."

Mary R. Risner

Mary R. Risner, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Mary R. Risner, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 14 day of August, A.D., 2008.

Margaret Jackson
Notary Signature

